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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020(MG)

- - - - -x

In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

October 17, 2012

2:01 PM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

(CC: Doc. 1781) Possible Hearing re Debtors' Motion to Approve  
Amendment to the Barclays DIP Facility and Fees Payable  
Thereunder if No Objections are Filed

(CC: Docs. 1242, 945, 61) Hearing re Pre-Auction Objections of  
the RMBS Trustees to the Debtors' Sale Motion

(CC: Doc. 1762) Debtors' Amended Motion for an Order Pursuant  
to Section 503(c)(3) of the Bankruptcy Code Authorizing (I)  
Implementation of a Key Employee Incentive Plan for Certain  
Insiders; and (II) Payment of Any Obligation Arising Thereunder  
as Administrative Expenses

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1 P R O C E E D I N G S

2 THE COURT: Please be seated. All right. We're here  
3 on Residential Capital, LLC, number 12-12020.

4 MR. GOREN: Thank you, Your Honor. Todd Goren,  
5 Morrison & Foerster, on behalf of the debtors. If I may, I'd  
6 like to go a little bit out of order since I know there's a lot  
7 of people here interested in the resolution of the pre-auction  
8 objections --

9 THE COURT: Sure. Go ahead, Mr. Goren.

10 MR. GOREN: -- and whether there's going to be a  
11 hearing on that today. And I'm pleased to report that we've  
12 reached an agreement in principle that will resolve the  
13 trustees' pre-auction objections at least with respect to  
14 Nationstar relating to what the trustees call the limitation on  
15 future performance and the list of servicing obligations to be  
16 assumed.

17 First, Nationstar has agreed to assume all of the  
18 servicer and master servicer obligations under the PSA from and  
19 after the closing including indemnity obligations in favor of  
20 the trustees for past, present or future matters and without  
21 any redefinition of those duties.

22 Second, as provided in the proposed sale order,  
23 Nationstar will not have liability for any origination related  
24 liability or any liability stemming from pre-closing acts or  
25 omissions by the debtors. These pre-closing liabilities must

1 be asserted by the trustees as secured claims or general  
2 unsecured claims in these cases depending on their nature.

3 And third, Nationstar will be afforded an  
4 administrative priority claim against the debtors' estates for  
5 certain indemnity expenses payable to the trustees.

6 Finally, the trustees have committed to amend the PSAs  
7 to permit Nationstar to finance servicing advances.

8 The same approach would apply to the agreements that  
9 were subject of joinders filed by Wells Fargo, US Bank, Bank of  
10 New York, as master servicer, and Wells Fargo as custodian. Of  
11 course, to the extent the parties cannot agree on final  
12 language implementing this agreement, the objections would be  
13 preserved for a final sale hearing. Also, the trustees' pre-  
14 auction objections are preserved for the final hearing if  
15 Nationstar is not the successful bidder. And as I understand  
16 it, the trustees are still also preserving their rating agency  
17 consent issues and if those can't be resolved prior to the sale  
18 hearing, those would go forward at the sale hearing as well.

19 THE COURT: Is the APA going to be revised to reflect  
20 the agreement that you've put on the record?

21 MR. GOREN: Yes. We'll start working right away on a  
22 sale order and APA -- a necessary sale order and APA  
23 amendments. We've already discussed this with other bidders  
24 for the platform, the potential resolution. We'll get on the  
25 phone with them and explain to them in more detail what the

1 resolution is. And as soon as we have revisions, we'll provide  
2 it to the debtors.

3 THE COURT: When do you anticipate being able to  
4 finalize something in writing? My focus is much more a level  
5 playing field for any bidders that everybody knows precisely  
6 what's been agreed to.

7 MR. GOREN: I understand. I mean, I'm hopeful a  
8 matter of days -- you know, a day or two we can get this done.  
9 I mean, I think everybody's goal should be to get it done  
10 before Friday which is the bid deadline. So that's certainly  
11 what we're going to work toward.

12 THE COURT: Okay. Does anybody else wish to be heard  
13 with respect to this?

14 MR. WEITNAUER: Your Honor, Kit Weitnauer from Alston  
15 & Bird speaking today for all of the RMBS trustees. That is  
16 correct. There are nuances -- there's language to be read on  
17 but, in principle, we have talked about this a lot. We think  
18 we all know what we're going to do. Thank you.

19 THE COURT: Well, I know. And to the extent -- the  
20 filings that certainly the debtor made made clear that they  
21 were continuing their efforts to try and resolve these issues.  
22 At the prior status conferences, that was certainly made clear  
23 both by the RMBS trustees' counsel that they were still  
24 endeavoring to resolve the issues. So I'm glad that those  
25 efforts have seemingly come to fruition. And --

1 MR. WEITNAUER: We are, too, Your Honor. Thank you.

2 THE COURT: Thank you very much. Anybody else wish to  
3 be heard?

4 MS. TOMASCO (TELEPHONICALLY): Your Honor, on the  
5 phone.

6 THE COURT: Just wait until we finish those in the  
7 courtroom, okay?

8 MR. KIBLER: Sorry, Your Honor. John Kibler from  
9 Allen & Overy representing HSBC Bank USA. We haven't seen the  
10 full settlement. We filed a joinder to the objection of RMBS  
11 trustees. As outlined, that certainly sounds like something  
12 reasonable. We just need to see the final details.

13 THE COURT: Okay.

14 MR. KIBLER: So we still have an objection out there.

15 THE COURT: All right. Well, let me just say -- and I  
16 spent a very considerable amount of time preparing for these  
17 issues, but that was done with full notice that the parties  
18 were endeavoring to resolve them and I'm glad that they did.

19 My comment now really focuses on the very, very, very  
20 late objections that were filed last night, this morning, some  
21 of which seem to be objecting to the Court hearing this matter  
22 today. I just want to make clear that you have to have been in  
23 an alternate universe not to understand that the pre-auction  
24 objections were going to be heard today. The revised  
25 scheduling order that was entered in July specifically had an



1 August 23 deadline for any pre-auction objections not only for  
2 the RMBS trustees, but for any other party. And there  
3 certainly were objections filed by some other parties. But  
4 those and that scheduling order set out precisely what issues  
5 would be considered as part of the pre-auction objections. So  
6 those of you who filed last night, or yesterday, or today  
7 thinking you were going to derail a hearing today because you  
8 think there hadn't been adequate notice of this, I'm not sure  
9 what you were thinking. If you're on ECF, you should be  
10 following the docket. At each of the hearings over the last  
11 couple of months, there have been updates on the status of the  
12 RMBS settlement. That has included not only issues about  
13 scheduling, discovery and other issues with respect to the  
14 hearing which is now in January, but there have been updates  
15 with respect to the pre-auction objections with the RMBS  
16 trustees. So I want to make clear that if there's an order  
17 that provides for a schedule for filing objections and you  
18 don't comply with it, the Court will not consider the  
19 objections. And that goes for the future. Okay.

20 MR. ZIDE: Your Honor, Stephen Zide from Kramer Levin  
21 Naftalis & Frankel for the committee. We're frankly very happy  
22 that a deal was reached. The doubles and the details, we just  
23 found out about it, in particular, the administrative claim he  
24 mentioned. So we'll see the documentation, but we reserve our  
25 rights.

1 THE COURT: Certainly. Thank you. Mr. Lee, are you  
2 picking up -- is there anything -- what's next? I mean, I  
3 don't know who's picking up with the agenda. I don't need to  
4 hear anything else on this subject.

5 MR. LEE: I wasn't going to say anything, Your Honor.

6 THE COURT: Okay.

7 MR. LEE: I thought I could --

8 THE COURT: Hang on. Whoever's on the phone, your  
9 heavy breathing is coming through into the courtroom so you  
10 need to sort of -- if you're holding a receiver, move away from  
11 the receiver, put your phone on mute. Okay. Thank you. Go  
12 ahead, Mr. Lee.

13 MR. LEE: So what would have been item number 1, which  
14 is an uncontested matter, Your Honor, is the debtors' amended  
15 motion for approval of its key employee retention program --  
16 I'm sorry -- key employee incentive program. Pardon me.

17 So following Your Honor's opinion in August, we've  
18 been working, the debtors and the advisors, to structure a KEIP  
19 to ensure that it addresses the concerns that Your Honor raised  
20 in the opinion and also with the U.S. trustee and with the  
21 committee. And we understand that the primary concern, the  
22 principle concern that was expressed was that there was too  
23 much emphasis given to closing the sales in the program.

24 So what we did, Your Honor, was go back to the drawing  
25 board. The terms of the KEIP, as amended, are attached in Ms.

1 Janiczek's declaration. We worked through that with the U.S.  
2 trustee who worked through it with the committee. We submitted  
3 a supplemental brief to the U.S. trustee explaining how we felt  
4 that we had now resolved what the issues were. And I'm pleased  
5 to report, Your Honor, that after a fairly lengthy and engaged  
6 discussion on what's obviously a very topical issue that there  
7 is consensus or at least no objection to the form of the  
8 modified KEIP. And we hope that we followed Your Honor's  
9 guidance in (a) coming before you with a consensual program;  
10 and secondly, one that is obviously decidedly incentivizing.

11 So with that, Your Honor, we have a form of order  
12 which -- I know we submitted. I believe there was one  
13 additional change that was requested by the creditors'  
14 committee which was the backhand more of the payment. And so,  
15 we have a form of modified order which I'm happy to bring to  
16 the Court. And then we will file it electronically to Your  
17 Honor's chambers.

18 THE COURT: All right. Does anybody else wish to be  
19 heard with respect to the KEIP?

20 THE COURT: All right. The Court has reviewed --

21 MS. TOMASCO: Your Honor, on the phone. I'm not sure  
22 if we moved past the limited objections of the RMBS trustees  
23 and the joiners thereto. I think we've gone to the key  
24 employee retention program --

25 THE COURT: May I ask who's speaking?

1 MS. TOMASCO: This is Patty Tomasco on behalf of the  
2 Frost National Bank. We joined in the RMBS trustee objection,  
3 but we were not mentioned in the debtors' announcement of  
4 whether or not our servicing agreement was going to be included  
5 in the changes to the APA.

6 THE COURT: Mr. Goren, can you shed any light on that?

7 MR. GOREN: Your Honor, I mean, our view had been that  
8 the pre-auction objections related to the trustees. That was  
9 who we entered into the scheduling order with. So --

10 THE COURT: Well, no. I mean, the scheduling order  
11 actually specifically provided that the RMBS trustees or any  
12 party could file pre-auction objections by August 23rd.

13 MR. GOREN: At any rate, we're still discussing with  
14 Nationstar, but we think in all likelihood, we're going to end  
15 up rejecting Frost Bank's servicing agreement. So that -- we  
16 think it makes sense to defer that until the sale hearing while  
17 we analyze those issues and --

18 THE COURT: All right. If you would speak with Frost  
19 Bank's counsel so they're at least fully advised of what's  
20 happening. Okay?

21 MR. GOREN: Will do. Thank you.

22 THE COURT: All right. Thank you. I'm sorry. Go  
23 ahead, Mr. Lee. Well, does anybody else wish to be heard with  
24 respect to the KEIP? All right. As I started to say, the  
25 Court has reviewed the modified KEIP. Obviously, I haven't

1 seen any last minute changes that were made in the proposed  
2 order. Obviously, I'm quite familiar with the matter and the  
3 Court is satisfied that the KEIP complies with all applicable  
4 law and therefore it is approved.

5 MR. LEE: Thank you, Your Honor. We'll submit a  
6 revised form of order.

7 THE COURT: Okay. Thank you.

8 (Pause)

9 THE COURT: Mr. Goren?

10 MR. GOREN: Thank you, Your Honor. Next, and I  
11 believe last, is the debtors' motion to approve the amendment  
12 to the Barclays' debtor-in-possession financing facility and  
13 related payment of fees.

14 THE COURT: Right.

15 MR. GOREN: We filed a declaration of Marc Puntus from  
16 Centerview Partners in support of the motion. As you might  
17 recall from the beginning of the case, one of the issues that  
18 was raised with the DIP was that it required us, upon any  
19 significant asset sale at least, to repay the entire DIP. And  
20 there was some concern that that didn't provide adequate  
21 flexibility to be able to close, for example, the whole loan  
22 sale before the platform sale. And those two things didn't  
23 necessarily need to go on the same time frame.

24 We were unable to secure those changes as part of the  
25 original DIP, but we're pleased to report that we did agree

1 with Barclays on an amendment to the DIP facility that will  
2 permit us to consummate the legacy portfolio sale ahead of the  
3 platform sale and also to sell certain FHA/VA loans up to 200  
4 million dollars. And those loans are a second lien collateral  
5 for the DIP. It's first lien collateral for the Ally LOC.

6 We believe that these changes will benefit the  
7 debtors' estates by (a) saving us in fees and expenses under  
8 the DIP because we'll be able to use the proceeds of the whole  
9 loan to pay down -- whole loan sale to pay down the DIP before  
10 we otherwise would have been able to; and second, we think it  
11 was important because it gives certainty to the whole loan  
12 bidders that they're not going to be stuck on the same time  
13 frame as the platform sale.

14 There were no objections to the motion. The  
15 creditors' committee did file a reservation of rights to ensure  
16 that the sale proceeds will be applied in the same manner as if  
17 the sales were closed simultaneously. The committee's basic  
18 concern is that if the sales were to close simultaneously, the  
19 proceeds of Barclays' first lien collateral, which were  
20 transferred into the DIP borrowers, the two entities created at  
21 the outset, would be used to satisfy the DIP. But if we  
22 consummate sales of second lien collateral first, it's possible  
23 those could be used to pay off the DIP which would then  
24 increase the equity in the DIP borrower. And equity of the DIP  
25 borrower has been pledged to junior secured bonds as a

1 replacement lien.

2 So it gets kind of convoluted but the debtors don't  
3 really believe that this is ultimately an issue because they  
4 believe that there would be an intercompany claim created, a  
5 post-petition intercompany claim, between the entity that paid  
6 the debt and the DIP borrower which would sort of leave things  
7 at status quo.

8 But to be clear, though, we don't intend to prejudice  
9 anybody's rights by entering into the DIP amendment. We  
10 certainly agree that the order in which we pay things should  
11 not substantially prejudice anyone's rights. And all parties'  
12 rights are reserved as to the use of sale proceeds. And it  
13 will be dealt with either, if necessary, in a sale order or as  
14 part of the plan.

15 THE COURT: Mr. Zide, you want to be heard on this?

16 MR. ZIDE: Mr. Goren laid out the issue that we had  
17 with them. We had had discussions with the debtors in the days  
18 leading up to this hearing. We were fine with him putting this  
19 on the record that this would be solved through an intercompany  
20 claim that unsecured creditors would not be prejudiced by this,  
21 Your Honor.

22 THE COURT: Thank you very much. Anybody else wish to  
23 be heard with respect to the debtors' motion to approve an  
24 amendment to the Barclays' DIP facility and fees payable  
25 thereunder? All right. The Court has reviewed the motion and

1 certainly aware of what the committee's concern was. I think  
2 that's been addressed on the record in a satisfactory fashion.  
3 So that motion's approved as well, Mr. Goren.

4 MR. GOREN: Thank you, Your Honor. We'll submit an  
5 order to chambers.

6 THE COURT: Okay. Mr. Lee, anything else that --

7 MR. LEE: Remarkably, not for Your Honor, no.

8 THE COURT: Can you give me an update on where things  
9 stand? The auction is still on and on track?

10 MR. LEE: Yeah. The auction is still on track. There  
11 are bidders, plural. We expect to receive the bids on Friday  
12 and then the auctions themselves will be conducted at the  
13 Sheraton beginning next Tuesday and Wednesday and potentially  
14 Thursday as well. And then we will file, obviously, Your  
15 Honor, a notice hopefully by Friday or earlier of who the  
16 winning bidders are. Hopefully robust bidding and increased  
17 price will make everybody happy.

18 THE COURT: Okay. All right. Thank you.

19 MR. LEE: Thank you, Your Honor.

20 THE COURT: All right. Anything else for today? All  
21 right. We're adjourned, but I would like to see Mr. Lee, Mr.  
22 Zide and Mr. Masumoto in my chambers when the hearing is over.  
23 Okay?

24 MR. LEE: Thank you, Your Honor.

25 THE COURT: Thank you very much.



RESIDENTIAL CAPITAL, LLC, et al.

25

1 (Whereupon these proceedings were concluded at 2:18 p.m.)

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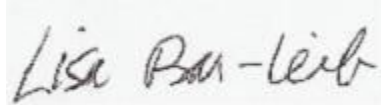
R U L I N G S

DESCRIPTION	PAGE	LINE
Debtors' amended motion for approval of its	21	4
key employee incentive program granted		
Debtors' motion to approve an amendment to	24	3
Barclays' DIP facility and fees payable		
thereunder granted		

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C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.



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